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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1946

No. 526

315 WEST 97TH STREET REALTY CO., INC., ODEM CORPORATION, MAPLE-81ST STREET, INC., and 1165 PARK AVE. CORPORATION,

*Petitioners,*

*against*

PAUL A. PORTER, PRICE ADMINISTRATOR,

*Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS.

## MOTION TO DISPENSE WITH PRINTING SPECIFIED PARTS OF CERTIFIED TRANSCRIPT OF RECORD AND AFFIDAVIT IN SUPPORT THEREOF

/ CHARLES E. HUGHES, JR.,
*Counsel for Petitioners.*

CURTISS E. FRANK
BARBARA H. WOODWARD
*Of Counsel.*

IN THE

# Supreme Court of the United States

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*Petitioners,*

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No. 526

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS.

## MOTION TO DISPENSE WITH PRINTING SPECIFIED PARTS OF CERTIFIED TRANSCRIPT OF RECORD

Upon the annexed affidavit of Charles E. HUGHES, Jr., sworn to October 23, 1946, petitioners above named respectfully move this Court for an order directing the Clerk of this Court to dispense with the printing, for the purposes of the presentation to this Court of the petition for certiorari herein, under Rule 38, subdivision 7 of the Rules of this Court, of the following material appearing on the following pages of the certified transcript of the record in this case, heretofore filed in the office of the Clerk of this Court pursuant to subdivision 1 of said Rule 38:

Item (1). Respondent's motion to introduce additional evidence, December 20, 1944 (*R. 861-863);

Item (2). Order on respondent's motion, January 5, 1945 (R. 864);

Item (3). Respondent's memorandum analyzing additional evidence, January 10, 1945 (R. 865-876);

Item (4). Respondent's additional evidence (November, 1944, survey), January 10, 1945 (R. 877-942);

Item (5). Appendix B to complainants' reply brief, January 30, 1945 (R. 943-958), analyzing respondent's additional evidence;

Item (6). Respondent's petition for rehearing and motion to introduce additional evidence, July 5, 1945 (R. 977-994);

Item (7). Respondent's motion to introduce additional evidence, July 7, 1945 (R. 995-996);

Item (8). Order granting respondent's motion to introduce additional evidence, July 9, 1945 (R. 998);

Item (9). Respondent's additional evidence (June, 1945, survey), July 9, 1945 (R. 999-1070);

Item (10). Respondent's additional evidence (June, 1945, survey), July 9, 1945 (R. 1071-1080);

Item (11). Order granting complainants an extension of time to introduce additional evidence, September 27, 1945 (R. 1081);

Item (12). Complainants' motion to introduce additional evidence, November 1, 1945 (R. 1082-1101);

Item (13). Respondent's answer to complainants' motion, November 9, 1945 (R. 1102);

Item (14). Order granting complainants' motion, November 9, 1945 (R. 1103);

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*"R" refers to the record as certified to this Court by the court below and the pages as numbered in such certification.

Item (15). Complainants' motion to add an additional complainant, January 30, 1946 (R. 1104-1107);

Item (16). Respondent's answer to complainants' motion, February 1, 1946 (R. 1108);

Item (17). Order substituting Paul A. Porter as respondent, March 25, 1946 (R. 1110);

Item (18). Respondent's motion to introduce additional evidence (April, 1946, survey), April 30, 1946 (R. 1111-1112);

Item (19). Stipulation relating to said additional evidence, April 30, 1946 (R. 1113-1114);

Item (20). Order granting respondent's motion, April 30, 1946 (R. 1115);

Item (21). Petition that Emergency Court of Appeals settle record for review on writ of certiorari in this Court, September 16, 1946 (R. 1151-1161); and

Item (22). Respondent's suggestion as to lack of jurisdiction of the court to entertain complainants' "Motion to Settle Record", September 17, 1946 (R. 1162-1164);

such order to be without prejudice, in the event that this Court grants said petition for writ of certiorari herein, to any motion which may be made by either party hereto with respect to the record to be printed for the use of this Court in that event; and for such other and further relief as this Court may deem just and proper.

October 23, 1946.

Respectfully submitted,

CHARLES E. HUGHES, JR.
*Counsel for Petitioners*
One Wall Street
New York 5, New York

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1946

| | |
|---|---|
| 315 WEST 97TH STREET REALTY CO., INC., ODEM CORPORATION, MAPLE-81ST STREET, INC., and 1165 PARK AVE. CORPORATION, *Petitioners,* *against* PAUL A. PORTER, PRICE ADMINISTRATOR, *Respondent.* | No. 526 |

## AFFIDAVIT OF CHARLES E. HUGHES, JR., IN SUPPORT OF MOTION

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } SS.:

CHARLES E. HUGHES, JR., being duly sworn, deposes and says:

I am an attorney duly admitted to be a member of the bar of this Court, with offices at One Wall Street, in the Borough of Manhattan, City and State of New York. I am counsel for the petitioners herein. I make this affidavit in support of a motion by petitioners to dispense with the printing of certain material which petitioners believe to be unnecessary to the consideration of their petition for certiorari herein.

The petition for a writ of certiorari to the United States Emergency Court of Appeals in the instant case was filed in this Court on September 21, 1946. Accompanying the petition for certiorari there was filed on the same day a certified transcript of the record in the case, including the proceedings in the Emergency Court of Appeals, which included all of the papers in the case, except a few items which respondent agreed with petitioners were unnecessary.

The certified transcript consists of four volumes of proceedings before the Price Administrator, which are in printed form, and of certain additional material presented directly to the Emergency Court, most of which is not in printed form. This motion relates only to that portion of the certified transcript which is presently unprinted and is concerned only with the printing required on presentation of the petition.

Because of the limited character of the questions which the petition presents for review in this Court, petitioners believe that only a comparatively small part of the rather extensive contents of this certified transcript is essential to the consideration of those questions. In the event that certiorari is granted, counsel for the parties hereto should carefully examine the entire record, printed and unprinted, in an endeavor to stipulate the omission of the large proportion of unessential material, as contemplated by subdivision 8 of Rule 38 of the Rules of this Court. From the present attitude of counsel for respondent (see *infra*, pp. 19-21), however, I anticipate that negotiations to that end would be protracted and that ultimately a motion would have to be made by petitioners to raise in this Court the question of proceeding on an abbreviated record.

If all this were done now, it would much delay this Court's action on the petition for certiorari. Moreover, this Court would not now be in as good a position to deal with such a comprehensive motion concerning the necessary contents of the record as it would be after it had become familiar with the issues in this case through its consideration of the petition. It is not necessary to make such a comprehensive motion at this time, because by far the greater part of the contents of the certified transcript is now in printed form, and I am informed that ten copies (but not forty copies) of this printed material are available to satisfy the requirements of subdivision 7 of Rule 38 relating to the presentation of the petition to this Court. The questions concerning the comparatively small part of the contents of the certified transcript which is unprinted are few and of relatively narrow compass. Only a brief explanation of the nature of the case and of the proceedings below is required to present them and to enable this Court to determine them. The larger questions as to what portion of the printed part of the certified transcript should be reprinted for the purposes of argument on the merits may be postponed until this Court has acted on the petition.

The case originated in a protest filed December 7, 1943, with the Price Administrator to the "Rent Regulation for Housing in the New York City Defense-Rental Area," issued by the Price Administrator under the Emergency Price Control Act of 1942 (56 Stat. 23) on October 8, 1943, to be effective November 1, 1943, and establishing March 1, 1943 as the maximum rent date. Summarily stated, the protest asked a percentage increase of 10%, later amended to 15%, of such maximum rents. The Price Administrator denied the protest on August 30, 1944, and

the protestants, on September 29, 1944, filed their complaint, under Section 204(a) of the Act, with the Emergency Court of Appeals which, upon the ensuing review, entered judgment on June 25, 1945 setting aside the Rent Regulation unless the Regulation were modified as directed by the court, in so far, but only in so far, as it applied to housing units bearing maximum rentals of $100 or more per month. On motion of the Price Administrator, the Emergency Court then vacated that judgment and granted a rehearing, and subsequently the Price Administrator reopened the underlying protest proceedings before him. On March 20, 1946 the Price Administrator again denied the protest, and the case was then re-argued in the Emergency Court of Appeals, which on August 23, 1946 entered judgment dismissing the complaint. The petition for certiorari seeks a review of that judgment.

The questions before this Court are presented in the petition for certiorari (p. 2) as follows:

> "1. Does the Emergency Price Control Act of 1942 (56 Stat. 23), as amended, in authorizing the Price Administrator to establish maximum rents which 'will be generally fair and equitable' permit the Administrator to establish maximum rents which prevent the rental housing industry in a defense-rental area from receiving a fair return on its investment?
>
> "2. If the Emergency Price Control Act be interpreted as authorizing the Price Administrator to establish maximum rents which have such effect, does the Act, to that extent, violate the Fifth Amendment?"

In the protest proceedings before the Price Administrator, and also before the Emergency Court of Appeals,

petitioners urged two distinct grounds of invalidity of the Rent Regulation: (1) that the maximum rents established thereby were insufficient to permit the rental housing industry in the Area an annual net operating income equal to that of 1939, the last pre-war year; and (2) that such maximum rents prevented the industry from receiving a fair return on the industry-wide investment. Both contentions were decided adversely to petitioners by the Price Administrator and by the court below. Because the decisions on the first question were based almost wholly on factual considerations, petitioners do not present that question for review in this Court. For somewhat similar reasons, they do not present (see petition, pp. 9-10) two subsidiary questions, relating respectively to whether the Administrator's statistical evidence was properly weighted, and whether the figures of operating expenses should include a reserve for property maintenance which had been deferred on account of war conditions. The second question above stated, however, which is presented in the petition for certiorari, was decided by the court below as a question of law (see petition, pp. 8, 10-11), and to its determination the major part of the record is believed to be unnecessary.

The certified transcript includes a series of surveys in tabular form covering operating statistics of large samples of apartment houses in New York City, which series, because two of the surveys are the most space-consuming items of the material involved in this motion, should be explained. During the period of over two and a half years in which this case was before the Price Administrator and the Emergency Court, five such surveys were presented, one by the protestants as the basis for their protest, and four

successively presented by the Price Administrator. The Administrator's first survey, called the "April 1944 survey", compared the operating experience of the years 1939, 1940, 1941, 1942 and 1943. It covered much the same matters as the protestants' original survey, and was based on a sample about double the size of protestants', so that protestants' survey was treated as superseded by the Administrator's. The Administrator's first denial of the protest in August 1944 was based upon it, and it appears in printed form in the record. That April 1944 survey was, however, superseded by the Administrator's second survey, called the "November 1944 survey", which added to the operating experience of the above years that of the first six months of 1944. It was submitted directly to the Emergency Court while the case was pending the first time before it, and is unprinted. It was the basis of the Emergency Court's first decision, which invalidated the Regulation as applied to housing accommodations renting for $100 a month and over; but, as above stated, that judgment was vacated, and it is not here in issue. The Administrator's motion for rehearing was based upon his third survey, called the "June 1945 survey", which carried the operating experience figures through the entire year 1944. It superseded the November 1944 survey, and was so treated by the Emergency Court, which in its decision on rehearing reached, on the basis of it, a different conclusion than that which it had reached in its first decision on the basis of the November 1944 survey. The June 1945 survey was submitted directly to the Emergency Court in unprinted form, but it was also before the Price Administrator when the protest proceeding was reopened, and the text or substance of all that petitioners regard as necessary for this Court's consideration of

the petition for certiorari, appears in the printed part of the record. The fourth of the Administrator's surveys, called the "April 1946 survey", also submitted directly to the Emergency Court, shows the operating experience of housing accommodations in the $100 and over per month rent range only. As to such properties it carries the figures through the entire year 1945, and supersedes the June 1945 survey as to that rental group; and it was so treated by the Emergency Court in its decision on rehearing. It is unprinted and, unlike the June 1945 survey, has no counterpart in the printed part of the record. Petitioners accordingly will have it printed for the use of this Court on the presentation of the petition.

The items in the certified transcript, with the printing of which the present motion seeks to dispense, fall into three major categories.

1. The items in the first category contain no evidence whatever bearing on the merits of the case, but comprise simply procedural matters, which petitioners believe to be wholly irrelevant now. These items, and further comments thereon, are as follows:

(a) (Items 1 and 2 in Motion). Papers and order on respondent's motion to the Emergency Court to introduce in evidence before it the Price Administrator's November 1944 survey (R. 861-864).

(b) (Items 6, 7 and 8 in Motion). Papers and order on respondent's motions to the Emergency Court for rehearing and to introduce in evidence before it the Price Administrator's June 1945 survey (R. 977-996, 998).

The motions were granted and the surveys introduced. The question of dispensing with the printing of the surveys themselves is treated under the second and third categories (*infra*, pp. 13-18). Petitioners raise no question as to the procedure whereby they came into evidence, and this procedural material is of no moment here.

(c) (Items 11, 12, 13 and 14 in Motion). Papers and order on petitioners' motion to the Emergency Court for leave to introduce additional evidence on the rehearing (R. 1081-1103).

The motion was granted, and the evidence proferred in the motion was introduced and appears in the printed part of the certified transcript (R. 507-603).

(d) (Items 15 and 16 in Motion). Papers on motion in the Emergency Court to add an additional complainant, petitioner 1165 Park Ave. Corporation (R. 1104-1108).

The motion was granted, and petitioners will have printed for the use of this Court the order granting same (R. 1109).

(e) (Item 17 in Motion). Order of the Emergency Court, March 25, 1946, substituting Paul A. Porter, as respondent, in place of Chester Bowles (R. 1110).

There is no dispute about this substitution.

(f) (Items 18, 19 and 20 in Motion). Papers and order on respondent's motion to the Emergency Court to introduce in evidence before it the Price Administrator's April 1946 survey (R. 1111-1115).

The motion was granted, the survey was introduced and, as above stated, petitioners will have it printed for the use

of this Court. Again, there is no question as to the procedure leading to its introduction.

> (g) (Items 21 and 22 in Motion). Petitioners' motion that Emergency Court of Appeals settle record for review on writ of certiorari in this Court, and respondent's suggestion as to lack of jurisdiction of the Emergency Court to entertain petitioners' "Motion to Settle Record" (R. 1151-1164).

This motion and suggestion are those described later in this affidavit (*infra,* p. 19). They are obviously unnecessary to this Court's consideration of the questions presented for review in the petition for certiorari.

2. The second category (Items 3, 4 and 5 in Motion) comprises the November 1944 survey (R. 877-942), a memorandum of respondent analyzing it (R. 865-876), and a counter-analysis contained in Appendix B to petitioners' reply brief on the first hearing in the Emergency Court (R. 943-958).

As above stated (*supra,* p. 10), this survey is now obsolete as appears from the opinion of the Emergency Court on rehearing. That opinion began as follows:

> "By order dated July 9, 1945 and upon petition of the Price Administrator this court vacated its judgment entered June 25, 1945 and granted a rehearing of the case. That judgment was based in large part upon the results of a November, 1944 survey of the operating experience of 1,642 structures containing 50,101 rental units in New York City for the calendar years 1939 through 1943 and for the six months period ended June 30, 1944. Upon rehearing a large amount of additional evi-

> dence was submitted by both the complainants and the Administrator. Included in the additional evidence submitted by the Administrator were the results of a survey dated June 20, 1945 covering substantially the same units as in the November, 1944 survey but including in addition their operating experience for the full calendar year 1944. The Administrator also submitted the results of a survey, dated April 22, 1946, of the operating experience of 4,630 units in 97 structures in New York City with an average monthly rental of $100 or more which included their operating experience for the full calendar year 1945. The results of these two surveys may be summarized in index number form as follows:"

The parties' respective analyses of the November 1944 survey are of course as obsolete as the survey itself.

3. The third and final category (Items 9 and 10 in Motion) comprises the June 1945 survey (R. 999-1080). While this is the latest survey, except for the properties in the $100 and over monthly rent range, petitioners believe that its printing now may properly be dispensed with by reason, among other things, of the extent to which the text or substance of its contents is reproduced in the printed part of the certified transcript.

Both this and the Administrator's surveys which preceded it bear primarily on the first question (*supra*, p. 9), namely that of comparative net operating income, which is not presented for review in this Court. The evidence which was introduced directly on the second question which is presented here, that of fair return on investment, is contained in other statistical matter which either is in the printed part of the certified record or included in the ma-

terial which petitioners will have printed for the use of this Court on the presentation of the petition. While some of the statistics in the June 1945 survey do have some bearing on that second question, petitioners do not believe that any thereof which are not already in print need be referred to either by counsel in their presentation, or this Court in its determination, of that question.

The chief differences between the June 1945 survey and the material that is already in print in the certified transcript are as follows:

The bulk of the survey is an "Operating Cost Study Apartments New York, N. Y.", dated June 20, 1945, prepared by the Accounting Department of the O. P. A. for the Director of the Program Division of the Rent Department. After a five-page letter of transmittal, that study contains forty-three exhibits, the first forty-one of which embrace detailed statistics of apartment operating data. Exhibit 1 gives this data for New York City as a whole and includes all rent ranges. Exhibits 2 to 41, inclusive, break down this comprehensive consolidated table into the figures for seven different rent ranges in the City, and the figures for the five boroughs of Manhattan, Brooklyn, Bronx, Queens and Richmond, first for all rent ranges, and then further broken down in each borough for the same seven rent ranges. The first comprehensive exhibit (Exhibit 1) is reproduced substantially in identical form in the printed part of the certified transcript as O. P. A. Exhibit 901 (R. 747), except that a comparison of the data for the six months ended respectively June 30, 1943 and June 30, 1944, which is believed to be now irrelevant, is omitted. In place of Exhibits 2 to 41, inclusive, of the study, which give the break-down by rent ranges and boroughs, the printed

part of the certified transcript includes O. P. A. Exhibits 904-930 (R. 749-762), which also give a break-down The main differences between the two sets of exhibits ar that in the printed exhibits: the comparison of operatig results for the several years is shown by index numbers rather than in dollar figures; the tables for the sever boroughs are not broken down into as many rent ranges s are those in the survey; and the component items of expe e are not detailed. As to the substitution of index numbe s for dollar figures in these subsidiary exhibits, the breakdown figures by rent ranges were, I believe, not referred to n the briefs or argument before the Emergency Court, xcept with respect to the $100 and over monthly rent rang and as to those rent ranges the June 1945 survey has been uperseded by the April 1946 survey; and the break-down boroughs has, I believe, never been referred to by the pa ies in the proceedings in the Emergency Court. The detail of the items of expense are believed to be significant only n the first question argued below (see *supra,* p. 9), wch is not before this Court, and to have no bearing on th issue of fair return on investment. Since the compreInsive figures for the entire City, in dollar amounts, and th all details of expense, appear in printed O. P. A. Exhit 901, petitioners believe that this gives all the informatn required for this Court's action on the petition.

Exhibit 42 in the Operating Cost Study, as we as a separate study included in the survey entitled "Apartment Occupancy December 1944, New York, N. Y.", date June 25, 1945, deals with statistics of trends of occupancy. In place of this material there appears in the printed rt of the record O. P. A. Exhibits 939 and 940 (R. 76-768) which show the occupancy trends by graphs. In thcourt

below, the occupancy statistics were, I believe, not used by either party on the issue of fair return on investment, but only on that of trends of net operating income. Petitioners believe that, if the occupancy statistics have any relevance to the questions before this Court, they are shown as satisfactorily by the graphs as by the figures.

The final exhibit, Exhibit 43, of the Operating Cost Study, is an analysis of December 1944 rents. The only use made below by either party of this exhibit, or of the corresponding exhibits in the preceding surveys, was, I believe, on the controversy with respect to the statistical weighting of the surveys, which petitioners have expressly excluded from the questions presented to this Court.

With respect to apartment properties with average monthly rent of $100 and over, the survey included a separate analysis of operating experience dated June 25, 1945, which has no counterpart in the printed part of the record. This section of the survey, however, like all of the figures in the Operating Cost Study for the $100 and over rent range, was superseded by the April 1946 survey, which dealt more comprehensively with that rent group and carried the figures one year further than the June 1945 survey. That the Emergency Court regarded the April 1946 survey as superseding, for the $100 and over rent range, all that had preceded it, is indicated by the passage from the court's opinion quoted above (*supra*, pp. 13-14).

The June 1945 survey also includes a memorandum, and a supporting letter from the Bureau of Census of the Department of Commerce, estimating the number of apartment house rental units in New York City falling in the $100 and over monthly rental range group. This estimate is based on O. P. A. Exhibit 577, which is in the printed part of the certified record (R. 311), and it is believed that this

exhibit is sufficient for the consideration of the questions presented to this Court.

The final document in the June 1945 survey is a study, entitled "Operating Experience of Apartment Properties Surveyed in New York City on which Depreciation and Interest Charges are Available", dated June 30, 1945. This, after a two-page memorandum of transmittal, contains seven exhibits, the first six of which show condensed summaries of income and expense, respectively, for New York City as a whole and for the boroughs of Manhattan, Brooklyn, Bronx, Queens and Richmond, and the seventh of which is an analysis of the December 1944 rents on the properties included in this report. The first exhibit, dealing with New York City as a whole, appears in substantially identical form (there is less detail of expense figures and the comparison between the six months ended respectively June 30, 1943 and June 30, 1944 is omitted) in O. P. A. Exhibit 931 which appears in the printed part of the certified record (R. 763). Also already printed are O. P. A. Exhibits 933-936 (R. 764-766) which give a more summary break-down by boroughs, in index numbers rather than in dollar figures, except that the Borough of Richmond (much the least populous of the boroughs, in which only ten properties were surveyed) is omitted. The break-down by boroughs was, I believe, not referred to by either side in the court below. The same, I believe, is true of the seventh exhibit, which has no counterpart in the printed part of the certified record. The figures which may be significant in this study are those of depreciation and interest for the properties surveyed for the City as a whole and these appear in printed O. P. A. Exhibit 931.

The November 1944 and the June 1945 surveys, and respondent's analysis of the former, alone comprise 30 pages of ordinary typewritten matter and 118 pages of tabular statistical matter. This tabular statistical matter is, comparatively speaking, very expensive to print, and petitioners believe that this substantial cost of printing would be a needless expense to petitioners, and also that these surveys and the other material which is the subject of this motion would needlessly encumber the record for the purposes of this Court's determination of the application for certiorari. If, contrary to petitioners' expectation, any member of this Court should desire to consult any portions of the June 1945 survey which are not included in the printed part of the certified transcript, or the November 1944 survey, they are available for that purpose in the certified transcript itself in the Clerk's office.

Counsel for petitioners have made repeated efforts to agree with counsel for respondent to dispense with the printing of the matter (except Items 21 and 22) which is the subject of this motion, or to obtain a determination of the necessity therefor otherwise than through a motion to this Court. Prior to the filing of the petition for certiorari herein, petitioners, after unsuccessful efforts to reach an agreement with the Office of Price Administration, filed with the Emergency Court of Appeals, on September 16, 1946, a motion (Item 21, R. 1151-1161) requesting that the record for review be settled by that court, eliminating as unnecessary the matter which is the subject of this motion, except Items 21 and 22. Respondent on September 17, 1946 filed a "Suggestion as to Jurisdiction of Court to Entertain Complainants' 'Motion to Settle Record'," which took the position that the Emergency Court did not have such jurisdiction (Item 22, R. 1162-1164). Said motion

had not been determined upon the date, September 21, 1946, when the petition for certiorari had to be filed, and accordingly, as above stated, there was filed with the Clerk of this Court on that date a certified transcript of the full record in the court below, except such items (not involved in this motion) as the parties had theretofore agreed to eliminate. On September 26, 1946 the Emergency Court of Appeals entered an order denying, without opinion, petitioners' said motion. That order recited respondent's suggestion as to that court's lack of jurisdiction to entertain the motion, and it is submitted that it may accordingly be fairly inferred that such jurisdictional question at least largely influenced such denial.

Thereafter, counsel for petitioners communicated with the General Counsel of the Office of Price Administration in an effort to arrive at an agreement with him and the Solicitor General of the United States to eliminate the matter above described. Counsel for petitioners proposed a stipulation, copies of which were sent to the General Counsel and the Solicitor General, to the effect that the proposed agreement cover only the printing of the ten copies of the record required on presentation of the petition for certiorari and that, if the petition were granted, the stipulation would be without prejudice to a motion by either party with respect to the forty copies required to be printed for argument on the merits. The proposed stipulation read as follows:

> "IT IS HEREBY STIPULATED AND AGREED by and between counsel for the parties hereto as follows:
>
> "1. That, the full record before the Emergency Court of Appeals having been certified to this Court, ten additional copies of the following matter need not be printed under Rule 38, subdivision (7) and

furnished for the use of this Court on consideration of the petition for a writ of certiorari herein:

[Here followed an enumeration of the matter which is the subject of this motion, except Items 21 and 22.]

"2. That, in the event that the petition for certiorari herein is granted, this stipulation will be of no further force or effect and will in no way control the printing of forty copies of the record pursuant to Rule 38, subdivision (7) of the Rules of this Court, or the matter to be included therein, and this stipulation will in that event be without prejudice to the making of any motion in this Court by any party hereto either to dispense with printing certain parts of the record or to print an abbreviated record."

By letter dated October 11, 1946, the General Counsel of the Office of Price Administration rejected the proposed stipulation on the ground that, in his opinion, the matter in issue is material to a consideration of the petition for certiorari. The Solicitor General has not responded.

No previous application for the relief requested in the foregoing motion has been made to this Court, or except as above stated.

CHARLES E. HUGHES, JR.

Sworn to before me this
23rd day of October, 1946.

HELEN B. GILMORE

HELEN B. GILMORE
Notary Public in the State of New York
Residence when appointed: Bronx Co.
Bronx Co. Clk's No. 194 Reg. No. 251-G-8
Certificates filed in
N. Y. Co. Clk's No. 962 Reg. No. 640-G-8
Kings Co. Clk's No. 222 Reg. No. 472-G-8
Queens Co. Clk's No. 626 Reg. No. 228-G-8
Commission Expires March 30, 1948

[SEAL]